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August 30, 2018

SENT VIA ECF

The Honorable Judge Katherine B. Forrest
United States District Court
Southern District of New York, Courtroom 238
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: **Rodriguez vs. 116 E. 31st Street Realty et al**
Case No.: 1: 18-cv-00588-KBF
REQUEST TO COMPEL PLAINTIFF TO RESPOND TO DISCOVERY

Dear Honorable Judge Forrest:

This office represents Defendants Umi Sushi, Inc. and Kun Luo Zheng in the above captioned matter.

We write this court to request an **order compelling Plaintiff to respond to Defendants' discovery demands.**

Copies of Defendants discovery demands were emailed to Plaintiff's counsel on July 20, 2018. Timely responses would have been due on or before August 20, 2018. No responses have been received as of this time.

On August 26, 2018, Defendants' emailed Plaintiff, reminding Plaintiff that discovery responses were due the previous week, and asking when responses would be received.

On August 27, Plaintiff responded to Defendants' email with only the following "Believe you are in violation of the FRCP." Defendants' immediately replied to Plaintiff, asking Plaintiff be more specific, to which Plaintiff responded with only "See the FRCP". Defendants emailed Plaintiff again asking Plaintiff to state his objection with some degree of specificity, asking Plaintiff to state what specific part of the FRCP was allegedly in violation and/or to describe the alleged violation in some way, or to state when discovery responses would be provided. Plaintiff has not responded in anyway to this request.

On August 29, Defendants again wrote to Plaintiff informing Plaintiff that Defendants would be writing to the court if the discovery issue could not be resolved, and asking Plaintiff to get back to Defendants by 5pm that day. Plaintiff has not responded in anyway.

“Under Rule 37, a party may move for an order to compel discovery when it has received no response to its interrogatory and document requests, provided movant “has in good faith conferred or attempted to confer” with the opposing party in an attempt to secure the sought responses. See Fed.R.Civ.P. 37(a)(2)(B). Rule 37 also allows the Court to impose sanctions on the non-responsive party. 37(a)(4). An award of reasonable fees incurred in bringing a motion to compel discovery is the least harsh of all the sanctions allowed under Rule 37. In fact, Rule 37 states that the court “shall” award reasonable fees to the movant if the motion to compel is granted, so long as a good faith attempt to confer with the non-responsive party is shown. 37(a)(4)(A)” *Aetna Life Ins. Co. v. Licht*, No. 03 CIV. 6764 (PKL), 2005 WL 180873, at *1 (S.D.N.Y. Jan. 27, 2005)

In this case, Defendants have not received any discovery responses from Plaintiff and have made good faith attempts to resolve discovery disputes prior to bringing this motion. Defendants first inquired on when Plaintiff would respond to outstanding discovery, and when in response Plaintiff raised a non-specific objection, “violation of the FRCP” and nothing else, Defendants made multiple inquires to discover what the basis for the supposed violation of the FRCP was or to again ascertain a date for discovery responses, with no response from Plaintiff, despite having several days to do so.

There is no justification for Plaintiff failure to provide discovery responses. As such **Defendants ask the court to compel Plaintiff to respond to Defendants discovery demands along with all other appropriate remedies.**

We thank Your Honor for your time and consideration in this matter.

Respectfully submitted,

LAW OFFICES OF VINCENT S. WONG

/s/ Michael Brand

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